



state senator
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2006 LEGISLATIVE UPDATE

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EMINENT DOMAIN

NEW LAW PROTECTS HOOSIERS' PRIVATE PROPERTY

The right to own property is fundamental to the American way of life. We are all familiar with the concept of "life, liberty, and the pursuit of happiness" set out in our Declaration of Independence. However, at the time the Declaration was issued, many Americans listed such basic God-given human rights as "life, liberty and property."

Last summer, the U.S. Supreme Court issued a ruling that threatens the right to own property. In *Kelo v. City of New London*, the court said that government may "take" private property for economic development. In other words, as then-Justice Sandra Day O'Connor wrote, "Nothing is to prevent the state from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

The Supreme Court, however, left a loophole, saying legislatures may further restrict the use of eminent domain. This year, the General Assembly did exactly that.

Last summer, Indiana created an Eminent Domain Study Committee to look at Indiana's

property rights laws to see how they could be improved. Many of their conclusions are now in the form of House Enrolled Act 1010.

Perhaps most importantly, the new law requires the reason for using eminent domain be something that benefits the public. Thus, eminent domain can be used for a legitimate government purpose-but not simply to increase a local government's tax base.

The new law does several other things, including placing time restrictions on eminent domain so that property owners are not left in limbo for years at a time; requiring just compensation for Hoosier property owners; and mandating good-faith negotiations between the condemner and the property owner.

When used appropriately, eminent domain is an important tool that can help provide anything from roads to parks to schools for public use. HEA 1010 ensures that this tool is not abused at the expense of Hoosiers' right to own private property.

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SENATOR ROBERT D. GARTON

serving district 41: Bartholomew and Johnson Counties

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Immediate Property Tax Relief Passes; Long-Term Aid Fails

Across the state, there is a strong desire to decrease local governments' reliance on property taxes, but there is a problem. In order to eliminate more than \$5.6 billion in revenue, we must find a new source of funding for local governments. This year, the Senate came up with a plan that would lower property taxes and replace that lost revenue with a more equitable tax. Unfortunately, the plan did not become law.

Statistics show that Indiana ranks among the worst in the nation in reliance on property taxes to fund local government. Indiana funds 89 percent of local government with property taxes. The national average is 78 percent and falling. That makes Indiana the 15th worst property tax state in the nation.

Also, Indiana is 14th worst in the nation in reliance upon property taxes in relation to sales and income tax. Property taxes provide 37.2 percent of income from "the big three" compared to national average of 32.4 percent and falling.

"Instead of passing this long-term relief, the General Assembly this year approved \$100 million in immediate assistance."

Property taxes, which are levied and collected by local - not state - government, fund local entities such as schools, libraries, and police and fire departments. It's no secret that the property tax is often unfair. It affects seniors, small business owners and farmers more than it affects people who can afford to pay the tax. The Senate plan to permanently lower property taxes replaces the unfair property tax with a more equitable income tax.

Under the Senate plan, local elected officials in each county would take two votes. The first, an incremental income tax increase estimated at less than one percent, would stop the growth of property taxes and freeze them at current levels. The second, an additional one percent, would actually lower property taxes by an average of 20 percent or more.

Instead of passing this long-term relief, the General Assembly this year approved \$100 million in immediate relief. This money will lower property tax increases this year, giving taxpayers a quick break. I am pleased that we were able to help Hoosier property owners, but I am also hopeful that long-term relief will come in the very near future.

This solution or a similar one would provide real, tangible, long-term property tax relief to Hoosiers. I look forward to supporting a similar plan in the future.

General Assembly Takes Step to Curb Drunk Driving

Each year, 40,000 Hoosiers are arrested for driving while intoxicated according to the Indiana Department of Criminal Justice. Many of these arrests were the result of alcohol related crashes. These people had the fortune of being able to walk away from the crash, but sadly, many innocent victims do not. Approximately 37 percent of fatal car accidents in Indiana involved alcohol. The Indiana General Assembly is joining with

other state efforts to reduce the amount of drunk driving in Indiana.

Senate Enrolled Act 145 was written in an effort to prevent repeat offenses of drunk driving. This bill allows the seizure of a person's vehicle if they had at least two prior convictions of driving while intoxicated and commit a violation of the law while driving. However, a vehicle may not be seized if it does not rightfully belong to the driver.

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It is the hope of the General Assembly that seizing a repeat offenders vehicle will take away the opportunity to cause a serious accident. In the case of drunk driving, a car becomes a dangerous weapon. By taking this weapon away from repeat offenders, the chance to drive while intoxicated is minimized and the safety of Hoosiers on the road is better protected.

Wine-Shipping Bill Saves State's Farm Wineries

An often-overlooked industry in the Hoosier state is the wine industry. More than 30 farms wineries in Indiana thrive in Indiana, but a recent the Supreme Court of the United States decision threatened their survival.

In May the Supreme Court of the United States ruled that both in-state and out-of-state wineries must be treated the same. That meant Indiana's direct-to-consumer shipping practices were unconstitutional. To remedy this problem, lawmakers undertook the difficult task of finding a compromise that ensured survival of our wineries and keeping alcohol away from underage drinkers.

The General Assembly succeeded in passing House Enrolled Act 1016, which creates a direct wine-seller's permit for both in- and out-of-state wineries, putting everyone on an equal playing field.

Consumers who order wine must have an Indiana address, be ordering wine for personal use and verify they are 21. This will keep minors from having easy access to the wine.

HEA 1016 limits the amount of wine a winery can ship to an Indiana address designate by an consumer to 216 liters of wine or 24 cases per year and also limits the wineries to shipping 27,000 liters or 3,000 cases total to Indiana addresses in a year.

This legislation is a good balance that allows our wineries to continue doing business as they have for the last thirty years. However it puts reasonable limits on the amount of direct shipping they are allowed to do. It also gives them additional business opportunities by allowing them to open three additional locations to sell their wine.

Hoosier farm winery industry is an important part of our economy and I am pleased that a resolution was reached during the session to make sure this industry continues to thrive.

Major Moves: Frequently Asked Questions

This year, the General Assembly passed Major Moves, a road funding plan that includes leasing the Indiana Toll Road to a private company for 75 years for \$3.8 billion. Throughout the months of debate, several recurring questions came up. It is important that Hoosiers understand the benefits of the lease, so I would like to use this opportunity to answer from frequently asked questions.

Why lease to a Australian-Spanish consortium?

The Austrailian company is the Macquarie infrastructure group, and American investors own 17. 4 percent of it. American investors include the Alabama Retirement Systems, Pennsylvania Public School Employee Retirement Systems, St. Louis Public School Retirement Systems, Teacher's Retirement System of Texas, JP Morgan Chase, Fifth Third Asset Management, and Bank One Investment Advisors.

The President of MIG is an American, born in Rhode Island, and currently lives in Toronto, Canada. The Spanish company is Cintras, and it's president is a woman who was born in Spain, is a Canadian citizen, and who lives in Austin, Texas. Three of the largest ten equity owners of Cintras are U.S. investors.

Why sell a state asset?

The toll road will be leased - not sold. The state will continue to own it. The Toll Road has lost money in five of the last seven years. And no toll road money in the last eight years has gone to the seven toll road counties for local projects.

Does it make sense to spend 75 years' worth of proceeds in just 10 years? What about future generations?

The state's 10-year road plan will be funded with the \$3.8 billion, but enough money will be left over for a Next Generation Trust Fund. The fund, which will start around \$500 million, will gain interest for five years. In 2011, and every



Senator Garton addresses the media at a press conference.

five years thereafter, the state will withdraw the interest and use it for road construction projects. The original \$500 million, however, will not be touched. This will ensure that future generations have money to maintain and build roads.

When the toll road was built, we were told the tolls would go away in a few years. Why hasn't that happened?

In 1954, \$280 million in bonds were issued to build the Indiana Toll Road. Today, we have approximately \$225 million in outstanding bonds. The state has only been able to afford paying down \$55 million of debt in 52 years. In addition, although the seven toll road counties receive some proceeds from toll road revenue, the road has only generated enough to give the counties a total of \$50 million. The lease payment is enough to pay off outstanding bonds, give \$40 million to each Toll Road county, and distribute more throughout the rest of the state.

Will the state be adequately protected if the private company goes bankrupt or if the terms of the lease are violated?

If SMP goes bankrupt or violates terms, the state will resume operations of the toll road and keep the \$3.8 billion. The lease also allows the state to approve or veto any hiring of a third-party to manage the road. In all cases, the state is protected, and the risk lies with SMP.

CLEAN ENERGY LAWS LEAD TO ALTERNATIVE FUEL INVESTMENTS

In the 2005 legislative session, our Clean Indiana Energy bill put Indiana at the forefront as a leader in new fuel technology. Currently, six ethanol plants have broken ground in Indiana with another 18 on the drawing board.

Other states are starting to see the benefits of investing in alternative fuels. Clean Indiana Energy II, Senate Enrolled Act 353, ensures Indiana remains a leader in biofuels.

SEA 353 establishes a \$50 million tax credit for new ethanol and biodiesel production facilities. Ethanol production plants cost \$79 million or more to build, and the companies don't receive tax breaks until they are making a profit in our state.

Ethanol and biodiesel production has a very positive impact on Indiana farmers. Indiana is the fifth largest state in corn production and fourth largest in soybeans. These are the two key dynamics associated with biofuel production. Currently, Indiana sends nearly 50 percent of corn and soybean productions out of state with no values added. This is the least profitable form of sale for farmers. It is estimated that farmers contracting with ethanol or biodiesel plants will gain an additional 5 cents to 10 cents per bushel.

SEA 353 also establishes a retail tax credit of 10 cents per gallon of E85 fuel sold to consumers. If retailers reach the maximum credit,



Senator Garton speaks on a bill on the floor of the Senate.

then Indiana will have sold over 20 million gallons of E85 in two years. This is a great incentive for retailers to encourage consumers to purchase E85 fuels.

Indiana is leading the nation with the highest number of E85 fueling stations. Our goal is to double our current numbers for a total of 40 E85 fueling stations in the state of Indiana at the end of 2006.

SEA 353 also requires the Indiana Economic Development Corporation to work with GPS software companies to include E85 fueling stations on GPS software.

This is amazing progress in such a short period of time. I am very proud of the fact that Indiana is leading the nation in this industry.

Telecom Law Could Save Money on Cable Bills

While much of the discussion in this year's session centered on physical infrastructure like roads and bridges, the General Assembly made a historic change in its unseen infrastructure. Through reforms made in House Enrolled Act 1279, Indiana will see lower cable prices, increased competition and a wave of investment in the state.

Experts have called HEA 1279 the most aggressive telecommunications reform in the nation and say it will likely be a model that

other states are sure to follow. The bill includes several provisions designed to give Hoosiers access to the best technology at a reasonable price. It contains two major provisions:

Following a Texas model, HEA 1279 creates a streamlined process through which video providers (such as cable companies) can enter

a market to compete for customers. Known as statewide video franchising, this process will result in more video competition and lower prices for consumers. Since September, when Texas statewide franchising went into effect, more 120 franchises have been granted to competing companies.

HEA 1279 will eliminate the virtual monopoly of cable providers and give most Hoosiers a choice in video service. In February, Ball State University's Digital Policy Institute released a study saying Hoosiers could save a total of \$262 million on their cable bills annually as a result of new choices.

A recent survey of CEOs in Site Selection Magazine showed that access to high-speed communications is the most important factor in drawing new business development to a partic-

ular state. HEA 1279 encourages telephone companies to deploy more high-speed Internet, called broadband, by gradually deregulating basic phone services if broadband is made available. Companies must be able to offer high speed Internet to 50 percent of households in any given exchange before they can raise rates in that exchange. Monthly basic rates may increase by only \$1 per year until 2009.

To help low-income Hoosiers, HEA 1279 establishes the Indiana "Life Line" program that provides discounted telephone rates to Hoosiers below 150 percent of the federal poverty level. This is a supplement to the federal program, which aids consumers with a household income below 135 percent of the federal poverty level. Consumers will also be protected through a ban on "local measured service," which is the practice of charging for local phone calls by the minute.

Think-tank FreedomWorks has said HEA 1279 will create 20,000 new jobs and \$7 billion in investment in Indiana. And that is an opportunity that can't be passed up.



Senator Garton visits with pages.